

## REMARKS

Applicants gratefully acknowledge the Examiner's statement in the October 6, 2008 Office Action that claims 3, 4, 28 and 30 "would be allowable if rewritten in independent form" (Office Action at 8). Applicants note, however, that claim 3 is already in independent form, with claims 4, 28 and 30 depending therefrom. Accordingly, claims 3, 4, 28 and 30 are already in condition for allowance.

In the Office Action dated October 6, 2008, the Examiner rejected claims 1, 9-14, 29 and 33-35 under 35 USC 102(b) as being anticipated by U.S. Patent No. 4,803,977 to Kremer, claims 24-27 and 32 under 35 USC 103 as being obvious over Kremer, claims 5-7 as being obvious over Kremer in view of USP 5,178,138 to Walstrom and claim 8 as being obvious over Kremer in view of USP 6,805,118 to Brooker. Applicants respectfully submit that the rejections should be withdrawn for at least the reasons set forth below.

### **Remarks About the Amendments to Claims 30 and 35:**

Applicants have amended claims 30 and 35 to recite an "exhaust" conduit rather than an "exhalation" conduit, such that the term has proper antecedent basis. These amendments do not narrow or otherwise alter the scope of claims 30 and 35, but rather are introduced merely to improve the clarity and form of those claims. Indeed, Applicants noted in the Specification that "the terms 'exhaust' and 'exhalation' are interchangeable" (Specification at 5, lines 21-23).

### **Remarks About The Prior Art Rejections:**

#### **Claims 1, 5-10, 29 and 33-35:**

Independent claims 1 and 33 each recite "a second inhalation conduit communicating with said input end of said chamber housing, wherein *said one-way inhalation valve is located in said second inhalation conduit*, said second inhalation conduit comprising *an oxygen intake line communicating with said one-way inhalation valve*, and wherein said one-way inhalation valve permits *one-way flow of oxygen* from said second inhalation conduit into said interior space of said chamber housing." Applicants respectfully submit that claims 1 and 33 distinguish over

Kremer.

First, the Examiner has applied the one-way valve 15 of Kremer as the one-way inhalation valve (Office Action at 2-3). Applicants respectfully submit, however, that the valve 15 of Kremer is *not* located in, and does not communicate with, any oxygen intake line. Rather, valve 15 is a unidirectional ambient *air inlet* valve (Kremer at Col. 2, lines 10-14; Col. 3, lines 15-25; FIG. 1). While Kremer does disclose a compressed gas inlet 11 for a nebulizer, which dispenses a radioactive mist (Kremer at Col. 1, lines 37-40; Col. 3, lines 5-14; FIG. 1), Kremer does not disclose or suggest locating a one-way valve in or between the inlet 11 and tube 21 (applied by the Examiner as the chamber housing (Office Action at 2)). To the contrary, Kremer discloses that the nebulizer is operated continuously by a compressed air supply, with the expandable tubing 21 and *outlet* valve 17 configured to alleviate excess pressure (Kremer at Col. 2, lines 21-24; Col. 3, lines 68).

Even a cursory review of Kremer reveals that the air inlet valve 15 is not *located in or communicating with* the gas inlet 11, and the air inlet valve 15 does not permit one-way flow of oxygen through gas inlet 11 (Kremer at FIG. 1). Instead, the air inlet valve 15 is located in “tubular leg 16,” while compressed gas (e.g., oxygen or air) is introduced through “gas inlet 11” (Kremer at Col. 3, lines 5-26). In this way, “the patient can conveniently inhale the mist generated by the nebulizer 10 *together with air entering the one-way valve 15*” (Kremer at Col. 3, lines 35-37 (emphasis added)). As such, Kremer does not disclose, and in fact teaches away from, locating unidirectional valve 15 in the oxygen intake line. For at least these reasons, claims 1, 5-10, 29 and 33-35 should be passed to allowance.

In addition, claim 33 recites that the “flow path between said interior of said chamber housing and said outlet of said first inhalation conduit through said output end of said chamber housing is free of any valve structure.” In contrast, Kremer discloses a “unidirectional valve 23” located between the tube 21, applied by the Examiner as the chamber housing (Office Action at 2) and the outlet, e.g. mouthpiece 29 (Kremer at 27-45; FIG. 1). Such a valve 23 is required to ensure that radioactive

materials do not escape from the container 24 made of “lead or other radiation shielding material” (*id.*). Accordingly, claim 33 should be passed to allowance for at least this additional reason.

**Dependent Claims 8, 29, 34 and 35:**

Applicants further note that claim 8 recites “an endotracheal tube,” claim 34 recites “a WYE connector connecting said second inhalation conduit and said exhaust conduit” and claim 35 recites that “said oxygen intake line and said exhaust conduit are connected to a ventilator.” In contrast, Kremer expressly discloses “conduits for feeding the mist together with a gas containing oxygen to a patient to be inhaled during *the normal breathing process*” (Kremer at Abstract (emphasis added); *see also* Col. 1, lines 50-54). Moreover, Kremer discloses that the outlets 33 and 34 are coupled together and fed to a holding container “which will retain the gaseous material until the radioactivity has decreased to a level permitting normal disposal” (Kremer at Col. 4, lines 1-6; FIG. 1). As such, Kremer does not disclose, and in fact teaches away from, using an endotracheal tube, or connecting the exhaust conduit to the inhalation conduit or a ventilator. Therefore, claims 8, 34 and 35 are allowable for at least these additional reasons.

Claim 29 also further distinguishes over Kremer in that the air inlet valve 15 of Kremer permits communication of the nebulizer with ambient air (Kremer at FIG. 1). Accordingly, claim 29 should be passed to allowance for at least this additional reason.

**Claims 24-27 and 32:**

As noted above, Kremer does not disclose or suggest “*transmitting oxygen from a ventilator,*” or “*transmitting said substantial portion of said exhaust gas from said exhaust conduit to said ventilator during said exhalation sequence*” as recited in claim 24. Rather, Kremer expressly discloses “conduits for feeding the mist together with a gas containing oxygen to a patient to be inhaled during *the normal breathing process*” (Kremer at Abstract (emphasis added); *see also* Col. 1, lines 50-54). In addition, Kremer discloses that the outlets 33 and 34 are coupled together and fed to a

holding container “which will retain the gaseous material until the radioactivity has decreased to a level permitting normal disposal” (Kremer at Col. 4, lines 1-6; FIG. 1). As such, Kremer does not disclose, and in fact teaches away from, transmitting oxygen from, or exhaust gases to, a ventilator. Therefore, claims 24-27 and 32 are allowable for at least these reasons.

**Claims 11-14:**

Independent claim 11 recites that “said first portion [of an adaptor] defines a first passageway having a first and second channel and wherein said second portion comprises a second passageway, and wherein said adapter further defines a third passageway communicating between said first passageway and second passageways, wherein said one-way exhaust valve is disposed in said second passageway.” While the Y-connector 26 of Kremer, applied by the Examiner as the “adapter” (Office Action at 4), has first and second portions (legs 25, 30) with respective first and second passageways, Applicants respectfully submit that Kremer does not disclose or suggest that the first leg 25 has or defines a passageway having “a first and second channel” or a “third” passageway communicating between the legs 25, 30. Rather, any passageways formed by the legs 25, 30 appear to directly communicate without an intervening third passageway, and there is no disclosure in Kremer about the configuration of the interior of the leg 25, which appears from the exterior to be formed as a single channel. Accordingly, the Examiner’s rejections should be withdrawn and notice to that effect is earnestly solicited.

**Remarks About Second and Third Supplemental Information Disclosure Statements:**

As noted in Applicants remarks submitted in the Amendment and Reply filed mailed December 11, 2007 and again in the Reply filed June 24, 2008, Applicants have not received an initialed Form PTO-1449 acknowledging that the Examiner considered the timely filed Second Supplemental Information Disclosure Statement. Likewise, Applicants have not received an initialed Form PTO-1449 acknowledging

that the Examiner considered a timely filed Third Supplemental Information Disclosure Statement. Applicants respectfully request that the Examiner review the Second and Third Supplemental Information Disclosure Statements, along with the references cited therein, and initial the Form PTO-1449's to indicate his consideration thereof.

**CONCLUSION:**

If for any reason this application is not considered to be in condition for allowance and an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

Respectfully Submitted,

Dated: January 5, 2009

By: /Andrew D. Stover/  
Andrew D. Stover  
Reg. No. 38,629  
Attorney for Applicants

BRINKS HOFER GILSON & LIONE LTD.  
Post Office Box 10395  
Chicago, Illinois 60610  
(312) 321-4200